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***THE HON'BLE SRI JUSTICE BILAL NAZKI**

AND

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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+WRIT PETITION NO.28091 OF 1996

%Dated 15-06-2004

 # M/S. Stanes Tyres & Rubber Products Ltd., Vijayawada, represented by its Branch Manager, B.Srihari.

Petitioner

VERSUS

$ 1. The Commercial Tax Officer,

Autonagar, Vijayawada.

2. The Government of Andhra Pradesh,

represented by its Secretary, Industries &

Commerce Department, Secretariate, Hyderabad.

Respondents.

! Counsel for Petitioner: MR. A.V.Krishna Kaundinya Advocate

^Counsel for Respondents. G.P.for Taxes.

<GIST:

> HEAD NOTE:

? Cases referred

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO : 28091 of 1996

Between:

M/S. Stames Tyres & Rubber Products Ltd., Vijayawada, represented

By its Branch Manager, B.Srihari.

..... PETITIONER

AND

1. The Commercial Tax Officer,

   Autonagar, Vijayawada.

2. The Government of Andhra Pradesh,

   represented by its Secretary,Industries &

   Commerce Department, Secretariate, Hyderaba

.....RESPONDENTS.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly in the nature of mandamus or any other appropriate writ declaring that Rule 6B of the APGST Rules,1957, to the extent it requires the submission of an application for composition of tax under Section 6G of the APGST Act, 1957, within 30 days from the commencement of the year specially after the introduction of the Amendment of Section 5 G introduced by Ordinance 19 of 1996 with effect from 1-8-1996 as bad in law, ultra vires Section 5G of the Act and violative of Article 14 of the Constitution of India .

The Court Made the Following :

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE P.S.NARAYANA.

W.P.NO.28091 OF 1996.

ORDER: (per Bilal Nazki.,J)

The petitioner is dealing in retreading of tyres, is a registered dealer under A.P.General Sales Tax Act, 1957. The petitioner admittedly is liable to pay the tax under Section 5 of the A.P. General Sales Tax Act, 1957. By virtue of amendment in the A.P. General Sales Tax Act, 1957 Section 5-G was also introduced where a dealer could exercise his option of composition of payment of tax at the rate of 4% of the total turnover. The normal rate of tax at the relevant point of time was 6% and in

terms of Section 5-F of the Act, if a dealer applied for composition, he was required to pay 4% of the total turnover as tax under Section 5-G of the Act. To get the concession of paying at the rate of 4% as against 6% under Section 5-F, under Rule 6-B of Andhra Pradesh General Sales Tax Rules, a dealer is supposed to make an application to exercise his option within 30 days from the date of commencement of the business or within 30 days from the commencement of the financial year. Admittedly, the petitioner did not exercise his option within the time stipulated in Rule 6-B of the said Rules. On the other hand, he paid tax at the rate of 6% in terms of Section 5-F of the Act. In the month of August 1995, however an amendment was carried in Section 5-G of the Act reducing the rate of composition from 4% to 2%. Thereafter, the petitioner moved an application before the competent authority who rejected the application on the ground that the petitioner has not approached in time in terms of Rule 6 of the Rules to exercise his option. It is this order, which is challenged before us in the Writ Petition.

The sole contention of the learned counsel for the petitioner is that once the amendment was made in Section 5-G of the Act in August, 1996, he could not be expected to exercise his option 30 days after the commencement of the financial year which in his case commenced on 1st April, 1996. He submits that he had not started fresh business and therefore he would have also not been able to exercise his option within 30 days of commencement of the business. Rule 6-B of the Rules lays down:

> **6-B: Composition of tax in the case of dealers executing works contracts: - (1)** The dealer who elects to compound the tax for any year under Section 5-G shall submit an application in Form-L to the assessing authority each year, within 30 days from the commencement of the year or within 30 days from the date of commencement of the business if he commences the business during the course of the year, as the case may be:
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> Provided that the assessing authority having jurisdiction may on sufficient cause and for reasons to be recorded in writing condone the delay in respect of application received after expiry of 30 days from commencement of the year or after the expiry of thirty days from the date of commencement of business as the case may be. However, the delay condoned shall not exceed sixty days and delay shall be condoned within a period of ninety days from the date of commencement of such year or the business, as the case may be.
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> (2)(i) The assessing authority concerned, after conducting such verification as may be necessary permit such dealer, subject to the

conditions specified in sub-rule (1), to pay in lieu of the amount of tax payable by him during the year, in respect of which such permission is granted, an amount by way of compensation as provided in Sec. 5-G.

(ii) Such permission for composition shall be granted within thirty days from the date of receipt of the application during the year for which the composition is applied for. The permission shall be in Form L-1 and shall be valid for the entire year to which it relates.

(iii) The assessing authority may cancel such permission in the following cases:

a. if the dealer fails to pay tax in any month within the time specified and, or;

b. if it appears to the assessing authority that the dealer has suppressed whole or part of turnover in the return filed by him or; the return filed by the dealer appears to be incomplete or incorrect;

c. if the dealer contravenes any provisions of the Act or the rules made thereunder".

The learned Counsel for the Department, however, contends that although the amendment says that Section 5-F was substituted, but in fact the amendment was to the extent of reduction of rate of compounding alone which had been slashed from 4% to 2%. Before the amendment also, the petitioner could exercise the option by paying the compounded rate of tax of 4% which was 2% less than the normal rate and had he applied in time, perhaps he would get the benefit of the amendment as well. But since, there was no application pending from the petitioner, therefore, the competent authority was right in rejecting his application. The petitioner also further submits that the Rules cannot deprive the benefit granted by statute or by the Act to the dealers. We do not agree with the learned Counsel on the simple ground that it is the only rate of tax which was reduced by way of amendment and a new right was not conferred on the dealers. Had this provision been enacted in the month of August, 1996, perhaps, the petitioner would have been right in approaching this Court with the prayer he has made in this Writ Petition. But what the amendment did, was only reducing the rate of tax from 4% to 2%, and to enable the dealer to pay the tax at the rate of 4% there was a requirement under Rule 6 of the Rules to make an application within a stipulated period of time. It may not also be out of place to mention here that the Rule 6 of the Rules prescribes one-month period from the date

of commencement of the business. Even in this case, the petitioner has moved an application beyond one month of the enforcement of the amendment. For these reasons, we do not find any merit in the Writ Petition.

The writ petition is accordingly dismissed. No order as to costs.

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Bilal Nazki.,J

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P.S.Narayana.,J

Date : 15-6-2004

L.R. copy to be marked : YES

AM/DVS

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One Fair copy to the Honourable Mr. Justice Bilal Nazki

(for his Lordships kind perusal)

One Fair Copy to the Honourable Mr.Justice P.S.Narayana

(for his Lordships kind perusal)

1. The Commercial Tax Officer, Autonagar,Vijayawada.

2. The Government of Andhra Pradesh, represented by its Secretary,Industries& Commerce Department,Secretariate,Hyderabad.

3. 8. L.R.Copies.

4. The Under Secretary, Union of India,Ministry of Law,

Justice and Company Affairs,New Delhi.

5. The Secretary, A.P.Advocates' Association Library,High Court Buildings,Hyderabad.

6. G.P.for Commercial Taxes, A.P. High Court Buildings, Hyderabad. (OUT)

7. Two C.D.Copies.